

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

UNITED STATES OF AMERICA,

Appellee,

v.

CASE NO.: 22-4689

DIANA TOEBBE,

Appellant.

**APPELLANT'S UNOPPOSED MOTION TO EXCEED LENGTH
(WORD) LIMIT FOR RESPONSE TO MOTION TO DISMISS**

COMES NOW the Appellant, Diana Toebbe, by counsel, pursuant to Rule 27(d)(2) of the Federal Rules of Appellate Procedure, and moves the Court for leave to exceed the length (word) limit for her response to the Government's Motion to Dismiss Appeal. In support thereof, the Appellant states the following:

1. This appeal arises from Diana Toebbe's conviction and sentence in the United States District Court for the Northern District of West Virginia, on one count of conspiring with her husband and co-defendant, Jonathan Toebbe, to communicate "Restricted Data," in violation of 42 U.S.C. §§ 2274(a) and 2014. Mrs. Toebbe was convicted pursuant to a plea agreement. On November 17, 2022, she was sentenced to a term of imprisonment of 262 months.
2. On January 18, 2023, the Government filed a motion to dismiss Mrs. Toebbe's appeal. (Doc # 12-1). In the motion, the Government argues that Mrs.

Toebbe's appeal is barred by the appellate waiver in her plea agreement. The Government's motion to dismiss, including exhibits, is 245 pages in length. Mrs. Toebbe's response to the motion is due by February 21, 2023.

3. Per Rule 27(d)(2)(A) of the Federal Rules of Appellate Procedure, a response to a motion produced using a computer cannot exceed 5,200 words except with the court's permission.

4. Mrs. Toebbe seeks leave to exceed the length (word) limit for her response to the Government's motion to dismiss. Specifically, she requests permission to file a response containing not more than 7,500 words, excluding caption and signatures. The additional length of the response is necessary to fully present all the relevant facts and legal arguments relating to the enforceability of the appellate waiver in her plea agreement. In that regard, the response argues that her sentencing was infected with serious, fundamental due process errors that fall outside of the appellate waiver, and that enforcement of the appellate waiver would result in a miscarriage of justice. To address these issues, her response contains extensive discussion and analysis of the proceedings below, including her nearly seven-hour sentencing hearing. It will benefit this Court in its decision making to be fully apprised of complete and thorough arguments in this matter so that justice may be served.

5. The Government does not oppose Mrs. Toebbe's motion to exceed the length (word) limit for her response.

Wherefore, the Appellant respectfully requests that the Court grant her motion for leave to exceed the length (word) limit for her response to the Government's Motion to Dismiss Appeal.

APPELLANT
By Counsel

/s/ Barry P. Beck
Barry P. Beck
Power, Beck & Matzureff
308 West Burke Street
Martinsburg, WV 25401
(304) 264-8870

CERTIFICATE OF SERVICE

I, Barry P. Beck, counsel for Defendant, hereby certify that on the 14th day of February, 2023, the foregoing **APPELLANT'S UNOPPOSED MOTION TO EXCEED LENGTH (WORD) LIMIT** was electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Barry P. Beck
Barry P. Beck